

Senate File 465 - Reprinted

SENATE FILE 465
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1087)

(As Amended and Passed by the Senate March 20, 2017)

A BILL FOR

1 An Act relating to medical malpractice claims, including
2 noneconomic damage awards and expert witnesses.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135P.1, subsections 1 and 2, Code 2017,
2 are amended to read as follows:

3 1. "*Adverse health care incident*" means an objective and
4 definable outcome arising from or related to patient care that
5 results in the death or ~~serious~~ physical injury of a patient.

6 2. "*Health care provider*" means a physician or osteopathic
7 physician licensed under chapter 148, a physician assistant
8 licensed under and practicing under a supervising physician
9 pursuant to chapter 148C, a podiatrist licensed under chapter
10 149, or a chiropractor licensed under chapter 151, a licensed
11 practical nurse, a registered nurse, or an advanced registered
12 nurse practitioner licensed pursuant to under chapter 152 or
13 152E, a dentist licensed under chapter 153, an optometrist
14 licensed under chapter 154, a pharmacist licensed under chapter
15 155A, or any other person who is licensed, certified, or
16 otherwise authorized or permitted by the law of this state to
17 administer health care in the ordinary course of business or in
18 the practice of a profession.

19 Sec. 2. **NEW SECTION. 147.136A Noneconomic damage awards**
20 **against health care providers.**

21 1. For purposes of this section:

22 a. "*Health care provider*" means a physician or an
23 osteopathic physician licensed under chapter 148, a
24 chiropractor licensed under chapter 151, a podiatrist
25 licensed under chapter 149, a physician assistant licensed and
26 practicing under a supervising physician under chapter 148C, a
27 licensed practical nurse, a registered nurse, or an advanced
28 registered nurse practitioner licensed under chapter 152 or
29 152E, a dentist licensed under chapter 153, an optometrist
30 licensed under chapter 154, a pharmacist licensed under chapter
31 155A, a hospital as defined in section 135B.1, a health care
32 facility as defined in section 135C.1, a health facility as
33 defined in section 135P.1, a professional corporation under
34 chapter 496C that is owned by persons licensed to practice a
35 profession listed in this paragraph, or any other person or

1 entity who is licensed, certified, or otherwise authorized or
2 permitted by the law of this state to administer health care
3 in the ordinary course of business or in the practice of a
4 profession.

5 *b. "Health care services"* means medical diagnosis,
6 treatment, evaluation, advice, or acts that are permitted under
7 chapter 148, 148C, 149, 152, 152E, 153, 154, or 155A, or any
8 other health care licensing statutes of this state.

9 *c. "Noneconomic damages"* means damages arising from
10 pain, suffering, inconvenience, physical impairment, mental
11 anguish, emotional pain and suffering, loss of chance, loss of
12 consortium, or any other nonpecuniary damages.

13 *d. "Occurrence"* means the event, incident, or happening,
14 and the acts or omissions incident thereto, which proximately
15 caused injuries or damages for which recovery is claimed by the
16 patient or the patient's representative.

17 2. The total amount recoverable in any civil action for
18 noneconomic damages for personal injury or death, whether in
19 tort, contract, or otherwise, against a health care provider
20 shall be limited to two hundred fifty thousand dollars for any
21 occurrence resulting in injury or death of a patient regardless
22 of the number of plaintiffs, derivative claims, theories of
23 liability, or defendants in the civil action.

24 3. The limitation on damages contained in this section
25 shall not apply as to a defendant if that defendant's actions
26 constituted actual malice.

27 Sec. 3. Section 147.139, Code 2017, is amended to read as
28 follows:

29 **147.139 Expert witness standards.**

30 If the standard of care given by a ~~physician and surgeon~~
31 ~~or an osteopathic physician and surgeon licensed pursuant~~
32 ~~to chapter 148, or a dentist licensed pursuant to chapter~~
33 ~~153~~ health care provider, as defined in section 147.136A, is
34 at issue, the court shall only allow a person the plaintiff
35 designates as an expert witness to qualify as an expert witness

1 and to testify on the issue of the appropriate standard of
 2 ~~care if the person's medical or dental qualifications relate~~
 3 ~~directly to the medical problem or problems at issue and the~~
 4 ~~type of treatment administered in the case.~~ or breach of the
 5 standard of care if all of the following are established by the
 6 evidence:

7 1. The person is licensed to practice in the same or a
 8 substantially similar field as the defendant, is in good
 9 standing in each state of licensure, and in the five years
 10 preceding the act or omission alleged to be negligent, has not
 11 had a license in any state revoked or suspended.

12 2. In the five years preceding the act or omission alleged
 13 to be negligent, the person actively practiced in the same or a
 14 substantially similar field as the defendant or was a qualified
 15 instructor at an accredited university in the same field as the
 16 defendant.

17 3. If the defendant is board-certified in a specialty, the
 18 person is certified in the same or a substantially similar
 19 specialty by a board recognized by the American board of
 20 medical specialties or the American osteopathic association.

21 4. If the defendant is a licensed physician or osteopathic
 22 physician under chapter 148, the person is a physician or
 23 osteopathic physician licensed in this state or another state.

24 **Sec. 4. NEW SECTION. 147.140 Expert witness — certificate**
 25 **of merit affidavit.**

26 1. a. In any action for personal injury or wrongful
 27 death against a health care provider based upon the alleged
 28 negligence in the practice of that profession or occupation or
 29 in patient care, which includes a cause of action for which
 30 expert testimony is necessary to establish a prima facie case,
 31 the plaintiff shall, prior to the commencement of discovery in
 32 the case and within sixty days of the defendant's answer, serve
 33 upon the defendant a certificate of merit affidavit signed by
 34 an expert witness with respect to the issue of standard of care
 35 and an alleged breach of the standard of care. The expert

1 witness must meet the qualifying standards of section 147.139.

2 **b.** A certificate of merit affidavit must be signed by the
3 expert witness and certify the purpose for calling the expert
4 witness by providing under the oath of the expert witness all
5 of the following:

6 (1) The expert witness's statement of familiarity with the
7 applicable standard of care.

8 (2) The expert witness's statement that the standard of care
9 was breached by the health care provider named in the petition.

10 **c.** A plaintiff shall serve a separate certificate of merit
11 affidavit on each defendant named in the petition.

12 2. An expert witness's certificate of merit affidavit does
13 not preclude additional discovery and supplementation of the
14 expert witness's opinions in accordance with the rules of civil
15 procedure.

16 3. The parties shall comply with the requirements of section
17 668.11 and all other applicable law governing certification and
18 disclosure of expert witnesses.

19 4. The parties by agreement or the court for good cause
20 shown and in response to a motion filed prior to the expiration
21 of the time limits specified in subsection 1 may provide for
22 extensions of the time limits. Good cause shall include
23 but not be limited to the inability to timely obtain the
24 plaintiff's medical records from health care providers when
25 requested prior to filing the petition.

26 5. If the plaintiff is acting pro se, the plaintiff shall
27 have the expert witness sign the certificate of merit affidavit
28 or answers to interrogatories referred to in this section
29 and the plaintiff shall be bound by those provisions as if
30 represented by an attorney.

31 6. Failure to substantially comply with subsection 1 shall
32 result, upon motion, in dismissal with prejudice of each cause
33 of action as to which expert witness testimony is necessary to
34 establish a prima facie case.

35 7. For purposes of this section, "*health care provider*"

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1 means the same as defined in section 147.136A.